

STATEMENT OF THE CASE

Appellant-Defendant, Gregory L. Boorom (Boorom), appeals the trial court's entry of judgment on a jury verdict and award of damages for personal injuries in favor of Appellee-Plaintiff, Judith A. Howard (Howard).

We affirm.

ISSUE

Boorom raises one issue on appeal, which we restate as: Whether the trial court erred in entering judgment on a jury's verdict and award of damages for personal injuries because the jury improperly included compensation for attorney's fees within that award.

FACTS AND PROCEDURAL HISTORY

On March 29, 2004, Boorom and Howard were in an automobile accident whereby their two vehicles collided. On January 20, 2005, Howard filed her Complaint for Damages against Boorom, alleging that Boorom's negligence caused the automobile accident and requesting damages for her personal injuries that resulted from the accident. On August 1 and 2, 2006, a jury trial was held. Boorom admitted fault for the accident, but disputed the duration, nature, and extent of Howard's injuries. Therefore, the jury's sole task was to ascertain what amount of damages would compensate Howard for her injuries.

On August 2, 2006, the jury returned two verdict forms. The first verdict form awarded Howard \$16,000.00 in damages, plus legal fees. The second verdict form awarded Howard \$32,000.00 in damages. Immediately, Boorom orally moved the trial court for a mistrial, or in the alternative, requested the trial court to reduce the verdict to

the original \$16,000.00, exclusive of compensation for legal fees. The trial court denied Boorum's Motion for a Mistrial, and on August 23, 2006, entered its judgment in favor of Howard for an amount of \$32,000.00. On August 28, 2006, Boorum filed a Motion to Correct Errors and Motion for Remittitur, requesting that the trial court either grant a new trial or a remittitur to reflect a reduced award of damages for \$16,000.00. On August 30, 2006, the trial court denied both Motions.

Boorum now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Boorum argues that the jury's revised and increased verdict for damages in the amount of \$32,000.00 is improper because it included damages for attorney's fees. According to Boorum, the jury clearly believed that Howard was only entitled to \$16,000.00 for her personal injuries, in light of its original verdict form which indicated an award of that amount *plus legal fees*. (Emphasis added). Thus, essentially, Boorum argues that the jury's award of \$32,000.00 in damages is excessive.

When reviewing a jury verdict containing a damage award claimed to be excessive, we consider only the evidence that supports the award together with the reasonable inferences gathered therefrom. *Clancy v. Goad*, 858 N.E.2d 653, 657 (Ind. Ct. App. 2006). The jury is in the best position to assess the damages, and if there is any evidence to support the amount of the award, even if it is conflicting, this court will not reverse. *Id.* at 657, 658. Thus, "[a] jury['s] determination of damages is entitled to great deference when challenged on appeal." *Id.* at 657 (quoting *Sears Roebuck & Co. v. Manuilov*, 742 N.E.2d 453, 462 (Ind. 2001)).

“Compensation is the stated goal of a court when measuring damages for personal injuries.” *Zambrana v. Armenta*, 819 N.E.2d 881, 891 (Ind. Ct. App. 2004), *reh’g denied, trans. denied* (quoting *Kavanagh v. Butorac*, 221 N.E.2d 824, 828 (Ind. Ct. App. 1966)). The question so frequently raised in personal injury actions is how much money reasonably compensates the plaintiff for his or her injuries, as well as pain and suffering. *Zambrana*, 819 N.E.2d at 891. While no particular degree of mathematical certainty is required in determining damages, the award must be within the scope of the evidence. *Id.* “A damage award is not excessive unless the amount cannot be explained upon any basis other than prejudice, passion, partiality, corruption, or some other improper element.” *Id.* at 890 (quoting *Bee Window, Inc. v. Stough Enter., Inc.*, 698 N.E.2d 328, 330 (Ind. Ct. App. 1998), *reh’g denied, trans. denied*). To warrant reversal, the award “must appear to be so outrageous as to impress the [c]ourt at first blush with its enormity.” *Clancy*, 858 N.E.2d at 657 (internal citation omitted). Our supreme court has summarized this standard as follows:

A personal injury award is not excessive where (1) the award was not based upon jury prejudice, partiality, or corruption, (2) the jury has not misunderstood or misapplied the evidence, (3) the award was not based upon consideration of an improper element such as liability insurance, and (4) the award was within the parameters of the evidence. Under such circumstances, we will not substitute our judgment for that of the jury as to reasonable compensation for a plaintiff.

Kimberlin v. DeLong, 637 N.E.2d 121, 130 (Ind. 1994), *reh’g denied*.

In the present case, following its deliberations, the jury returned to the courtroom and announced it had reached a verdict. After the verdict form was handed to the trial

court judge, the attorneys for both parties were asked to approach the bench. The trial court then stated:

[TRIAL COURT]: Ladies and gentlemen of the jury, I've had a sidebar conference with the attorneys. And the bottom line is, the way the [verdict form is] put together, it has a dollar amount that you're permitted to award. And adding ["plus legal fees"] is not permissible. So I'm going to ask you to go back to the jury room So the jury has now given me a second option here. Okay . . . the jury now awards thirty-two thousand dollars (\$32,000.00). I want to poll each of you and ask you is this corporate decision also your decision.

(Transcript p. 366-67). Subsequently, the record indicates that a poll of the jury was taken, revealing that all of the jurors agreed with the new verdict.

Boorum now asserts that because Indiana generally follows the American Rule, which requires each party to pay his or her own attorney's fees, the jury improperly considered attorney's fees when it increased its award from \$16,000 to \$32,000. *See Bruno v. Wells Fargo Bank, N.A.*, 850 N.E.2d 940, 950 (Ind. Ct. App. 2006). The record shows that in calculating damages, the trial court instructed the jury to consider the following: (1) the nature and extent of Howard's injuries and the effect of the injuries on her ability to function as a whole person; (2) whether Howard's injuries are temporary; (3) any pain and suffering endured by Howard; (4) the value of Howard's lost earnings; and (5) the reasonable cost of Howard's medical care, treatment, and services related to the accident. Thus, there was no instruction to the jury directing it to reimburse Howard for her legal expenses. Additionally, the record fails to show that Howard offered any substantial evidence of expenses she incurred in bringing this action against Boorum.

Thus, the record would not support the jury's inclusion of compensation for legal expenses in the award.

However, it is well established that on appeal, we will presume the jury followed the law contained within the trial court's instruction and applied that law to the evidence before it. *Pendleton v. Aguilar*, 827 N.E.2d 614, 621 (Ind. Ct. App. 2005), *reh'g denied, trans. denied*. Furthermore, the record discloses that Howard presented a great deal of evidence pertaining to her injuries, the costs incurred in the medical care and treatment of those injuries, and her lost wages due to time off work after the accident. The record specifically reflects medical expenses and lost wages totaling more than \$12,000.00. Additionally, the jury was allowed to compensate Howard for the accident's impact on her total functioning, as well as her pain and suffering. Therefore, we cannot determine with certainty that the remainder of the award, roughly \$20,000.00, was to compensate Howard for her legal expenses. Consequently, we refuse to attempt to interpret the thought process of the jury in arriving at its verdict. *Id.* Accordingly, we must conclude that the jury followed the instructions given by the trial court and arrived at an appropriate damage award. *See id.*

CONCLUSION

Based on the foregoing, we conclude that the trial court properly entered judgment in favor of Howard for \$32,000.00.

Affirmed.

NAJAM, J., and BARNES, J., concur.